

United States v. Edwards, No. 04-30451

DEC 20 2005

Kleinfeld, J. dissenting:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I would vacate the sentence because I cannot see how a sentence anything like the one imposed could be reasonable under 18 U.S.C. §3553(a)(2).¹

Edwards is a big time thief. He was convicted of bank fraud in Arizona and ordered to pay \$3 million in restitution. Then he did it again, while on probation. He lied to a bank and tried to hide more than \$600,000 from his creditors. The district court spared him from prison on the theory that he had made “life-changing determinations.” His victims deserve better, even if he has made “life-changing determinations.”

The majority holds that because we do not know if the sentence, after the Ameline² remand, will be different from the sentence imposed that we should not determine if this sentence is unreasonable. Our post-Ameline decisions have focused on the fact that “[b]ecause we cannot say that the district judge would have imposed the same sentence in the absence of mandatory Guidelines,” we should

¹ 18 U.S.C. § 3553(a)(2)(A) requires a sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

² United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc).

remand for resentencing in accordance with Booker.³ In this case, I think we can safely conclude that the lenience did not result from the view that the Guidelines were mandatory.

³ United States v. Ruiz-Alonso, 397 F.3d 815, 820 (9th Cir. 2005).